

SPECIAL SIXTH DIVISION

[CA-G.R. CV No. 101206, May 30, 2014]

**BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF-APPELLEE, VS.
SPOUSES JULIUS MALING AND JANE DOE AND DIOSDADO
BERNABE, DEFENDANTS, JULIUS P. MALING, DEFENDANT-
APPELLANT.**

D E C I S I O N

ABDULWAHID, J.:

Before us is an appeal interposed by defendant-appellant Julius P. Maling from the *Decision*^[1] dated July 31, 2012 of the Regional Trial Court (RTC), Branch 134, Makati City, in Civil Case No. 07-1045, for collection of sum of money.

Plaintiff-appellee Bank of the Philippine Islands (BPI) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal business address at 18th Floor, BPI Card Center Bldg., 8753 Paseo de Roxas, Makati City.

Through its credit card system, BPI extends credit accommodations to its cardholders for the purchase of goods and services from accredited establishments and availment of cash advances from authorized branches or automated teller machines (ATM) to be paid later on by the cardholders.

The facts show that sometime in 2006, defendant-appellant Julius Maling was issued a BPI MasterCard credit card under Customer No. 0201007006288484, while co-defendant Diosdado Bernabe was issued an extension card, with Maling being the principal cardholder. By the Terms and Conditions governing the issuance and use of a BPI MasterCard, defendants, as the cardholders, obligated themselves to pay all charges incurred through the use of the credit card within a period of twenty (20) calendar days from the assigned cut-off date, without the necessity of a demand.^[2]

Defendants availed of the credit accommodation and used their BPI MasterCards on several occasions in accredited establishments. Defendants initially made regular payments to BPI, but began to be remiss in their payment beginning on November 2006. They eventually incurred a total charge of Php 428,407.87 as per Statement of Account dated October 14, 2007.^[3]

BPI made several verbal demands^[4] for payment on defendants, and on August 17, 2007, it sent defendants a demand letter for the immediate payment of their total outstanding balance, but to no avail. BPI was thus constrained to file a complaint for collection of sum of money^[5] against defendants.

During trial proper, BPI presented Carlyn Fernandez,^[6] an account specialist, as its only witness. Fernandez attested that Maling agreed to be bound by the Terms and Conditions governing the use and issuance of BPI credit cards when he signed the delivery receipt. It was likewise provided at the back of the credit card that "By

signing and/or using this card, the holder agrees to be bound by the Terms and Conditions Governing the Use and Issuance of the BPI Credit Card accompanying this card when issued, as amended from time to time."^[7]

Fernandez confirmed that defendants made several purchases and/or cash availments using their BPI MasterCards in accredited establishments. Fernandez also confirmed that as of October 2007, defendants had an outstanding obligation in the amount of Php 428,407.87.^[8]

Defendant-appellant Maling admitted receiving a BPI MasterCard from a messenger and then signing a delivery receipt, but he denied seeing the Terms and Conditions supposedly included with the card. He likewise denied signing anything which would signify his conformity to the Terms and Conditions.^[9]

On July 31, 2012, the RTC rendered the assailed *Decision*, the dispositive portion of which reads, as follows:^[10]

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff against defendants Julius Maling and Diosdado Bernabe[,] and the latter are ordered to pay the plaintiff jointly and severally the amount of P428,407.87 at 12% interest per annum from November 13, 2007 until fully paid, plus 1% penalty/charge per month and P50,000.00 attorney's fees and costs of suit.

SO ORDERED.

After his motion for reconsideration^[11] was denied,^[12] defendant-appellant filed a notice of appeal,^[13] and the same was given due course.^[14]

On appeal, defendant-appellant raised the following assignment of errors for the consideration of this Court:^[15]

I.

THE TRIAL COURT ERRED IN CONCLUDING THAT DEFENDANT-APPELLANT MADE ADMISSIONS AS REGARDS HIS OBLIGATIONS TO THE PLAINTIFF-APPELLEE DESPITE LACK OF EVIDENCE TO SUPPORT SUCH ALLEGED ADMISSION;

II.

THE TRIAL COURT ERRED IN HOLDING THAT THE TERMS AND CONDITIONS BIND THE DEFENDANT-APPELLANT DESPITE HIS LACK OF SIGNATURE THEREIN;

III.

THE TRIAL COURT ERRED IN UPHOLDING THE INTERESTS AND PENALTIES IMPOSED BY THE PLAINTIFF-APPELLEE DESPITE (1) THE VERY SAME PROVISION HAVING BEEN DECLARED NULL AND VOID BY THE SUPREME COURT IN THE CASE OF BANK OF THE PHILIPPINE ISLANDS VS. ILEANA MACALINAO (G.R. NO. 175490, SEPTEMBER 17, 2009) AND (2) THE PROVISION ON INTEREST BEING UNILATERALLY IMPOSED BY THE PLAINTIFF-APPELLEE

CONTRARY TO THE REQUIREMENT IN ARTICLE 1956 OF THE CIVIL CODE; and

IV.

THE TRIAL COURT ERRED IN DISREGARDING THE COUNTERCLAIM OF DEFENDANT-APPELLANT AS REGARDS THE PAYMENT OF SUCH AMOUNTS ERRONEOUSLY PAID AS INTERESTS IN ACCORDANCE WITH THE PRINCIPLE OF SOLUTION INDEBITI, AS PROVIDED IN ARTICLES 2154-2156 IN RELATION TO ARTICLE 1960 OF THE CIVIL CODE.

The petition is partially meritorious.

This Court is faced with a situation where defendant-appellant Maling admits receiving, possessing and using a credit card, but in the same breath, denies being bound by its Terms and Conditions. However, the records show that Maling admitted applying for a credit card with BPI and that the credit card delivered to him was merely a renewal card, to wit:^[16]

ATTY. AZARCON

Q: So, Mr. Witness, this credit card is a renewed issue or a new issue, so, you are already aware of the terms and conditions of the credit card?

A: Of the first credit card.

ATTY. ALCUDIA:

Objection, Your Honor, the question is misleading. The witness cannot be made aware of the terms and conditions by the mere issuance of the new credit card.

ATTY. AZARCON:

Your Honor, before the good counsel objected, the witness answered that he is aware of the terms and conditions of the first credit card.

WITNESS:

A: Of the first credit card. **When I first applied** —
(Emphasis supplied)

Nonetheless, although Maling admitted applying for a credit card with BPI, the bank still had the burden to prove its affirmative allegations.^[17] Even if we were to give credence to Maling's admission of applying for a credit card, BPI had the burden to prove that the application form Maling submitted contained the disputed Terms and Conditions, and that he gave his consent thereto. This the bank failed to do.

Therefore, as held in *Alcaraz vs. Court of Appeals*,^[18] the Terms and Conditions do not bind the petitioner (Maling in this case) "without a clear showing that petitioner was aware of and consented to the provisions of this document."